REMARKS

The following amendments and remarks are prepared in response to the final Office Action of June 16, 2005. Claims 1-7 and 10-14 remain pending in this application, after entry of this amendment. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Cancelled Claims 8, 9 and 15-17

Applicant has cancelled claims 8, 9 and 15-17 without prejudice. Applicant reserves the right to file one or more continuations on the cancelled claims.

Objection of Claim 16

Claim 16 has been cancelled and therefore the objection is now moot.

Rejection of Claims 5-7, 10-12 and 17 Under 35 U.S.C. § 102(b)

Claims 5-7, 10-12 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Sonderegger et al.* (U.S. Patent No. 5,692,129, hereinafter *Sonderegger*).

The rejection of claims 5-7, 10-12 and 17 should be withdrawn as *Sonderegger* fails to disclose all the recitations of these claims and therefore does not anticipate claims 5-7, 10-12 and 17.

Focusing now on the specific recitations of independent claims 5, 7, 10 and 12 and the inadequacies of *Sonderegger*, claims 5, 7, 10 and 12 have been amended to recite "second request transmitting means for, when the judging means judges that the receiving apparatus can not execute the download-target program, not transmitting the program request containing the identification of the download-target program." The download system includes the feature of not transmitting a program if it is judged that the receiving apparatus can not execute the download-target program. This feature provides an advantage of preventing a meaningless download.

Applicant's amendments should overcome the Examiner's statement on page 6 of the final Office Action that at col. 18, lns. 51-53, *Sonderegger* discloses the above-recited features. At col. 18, lns. 51-56, *Sonderegger* discloses that the <u>user may select</u> a specific application 23 and order the launcher 50 to <u>perform an application launching</u> step 150. In an embodiment tailored to the Windows environment, the application 23 is selected for launching by double-clicking a mouse button after positioning a desktop cursor over the application 23's displayed icon. *Sonderegger*, however, does not <u>prohibit</u> transmission of any program. Therefore, it follows that *Sonderegger* does not prohibit transmission of a program if the receiving apparatus can <u>not</u> execute the download-target program. Rather, *Sonderegger* <u>allows</u> the user to perform an application download by double-clicking a mouse button. Accordingly, *Sonderegger* does not disclose "second request transmitting means for, when the judging means judges that the receiving apparatus can <u>not</u> execute the download-target program, <u>not</u> transmitting the program request containing the identification of the download-target program." For at least the reasons discussed above, Applicant submits that claims 5, 7, 10 and 12 are patentably distinct over *Sonderegger* and the rejection under 35 U.S.C. § 102(b) should be withdrawn.

Rejection of Claims 1-3, 8 and 13-14 Under 35 U.S.C. § 103(a)

Claims 1-3, 8 and 13-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sahai et al.* (U.S. Patent No. 6,594,699, hereinafter *Sahai*) in view of The Unix Man Pages. Claim 8 has been cancelled without prejudice.

The rejection of claims 1-3 and 13-14 should be withdrawn as *Sahai* in view of The Unix Man Pages fails to teach or suggest all the recitations of these claims and therefore does not render obvious claims 1-3 and 13-14.

Focusing now on the specific recitations of independent claims 1, 2, 13 and 14 and the inadequacies of *Sahai* in view of The Unix Man Pages, claims 1, 2, 13 and 14 have been amended to recite "program transmitting means for <u>not</u> transmitting to the receiving apparatus the program with the identification when the judging means judges that the receiving apparatus can <u>not</u> execute the program." The download system includes the feature of <u>not</u> transmitting to the receiving apparatus the program when the judging means judges that the receiving apparatus can <u>not</u> execute the program. This feature provides an advantage of preventing a meaningless download.

Applicant's amendments should overcome the Examiner's statement on page 9 of the final Office Action that at col. 6, lns. 22-23, *Sahai* discloses the above-recited features. At col. 6, lns. 22-23, *Sahai* discloses that the server 10 chooses 46 the appropriate transport mechanism to use to stream the media asset to the client. E.g., use Asynchronous Transfer Mode (ATM) AAL5 or User Datagram Protocol (UDP/IP). Next, the server chooses 48 the route through the network 14 that the media streams will take from the server 10 to the client or to another destination as designated by the user. *Sahai*, however, does not <u>prohibit</u> transmission of any program. Therefore, it follows that *Sahai* does not prohibit transmission of a program when the judging means judges that the receiving apparatus can <u>not</u> execute the program. Rather, *Sahai* <u>allows</u> the server to choose the appropriate <u>transport mechanism</u> to use to stream the media asset to the client. Accordingly, *Sahai* does not teach or suggest "program transmitting means for <u>not</u> transmitting to the receiving apparatus the program with the identification when the judging means judges that the receiving apparatus can <u>not</u> execute the program."

Furthermore, combining *Sahai* with The Unix Man Pages does not teach or suggest the features as recited in claims 1, 2, 13 and 14. Applicant contends that The Unix Man Pages do

not recite these features. On page 1, The Unix Man Pages state that the top mode provides an ongoing look at processor activity in real time. It displays a listing of the most CPU-intensive tasks on the system, and can provide an interactive interface for manipulating processes. However, The Unix Man Pages do not prohibit transmission of a program when the judging means judges that the receiving apparatus can not execute the program. Hence, the deficiency of *Sahai* is not cured by The Unix Man Pages. Therefore, neither *Sahai* nor The Unix Man Pages, solely or in combination, teach or suggest "program transmitting means for not transmitting to the receiving apparatus the program with the identification when the judging means judges that the receiving apparatus can not execute the program." For at least the reasons discussed above, Applicant submits that claims 1, 2, 13 and 14 are patentably distinct over the combination of *Sahai* and The Unix Man Pages and the rejection under 35 U.S.C. § 103(a) should be withdrawn.
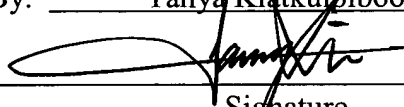
Rejections of Dependent Claims 3, 4, 6 and 11

Claims 3, 4, 6 and 11 depend from independent claims 2, 5, 10, adding structural features that more particularly define the invention and further distinguish over the cited references and the prior art of record. For these reasons, and for the reasons set forth above for claims 2, 5 and 10, the rejections of these dependent claims under 35 U.S.C. §§ 102(b) and 103(a) are improper and should be withdrawn.

Conclusion

In view of the amendments and remarks made above, it is respectfully submitted that the pending claims are in condition for allowance, and such action is respectfully solicited. Authorization is hereby given to charge our Deposit Account No. 19-2814 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such an extension.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 16, 2005.
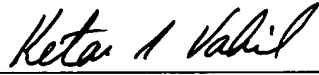
By: _____ Tanya Kiatkulpiboone _____

_____ Signature _____

Dated: September 16, 2005

Very truly yours,

SNELL & WILMER L.L.P.

_____ Ketan S. Vakil _____

Ketan S. Vakil
Registration No. 43,215
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
Telephone: (714) 427-7405